ATTORNEY FOR APPELLANT:

DANIEL M. GROVE
Special Assistant to the Public Defender of Indiana
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DUSTIN LEE SMART,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 35A02-0701-CR-24
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HUNTINGTON CIRCUIT COURT
The Honorable Thomas Hakes, Judge
Cause No. 35C01-0609-FB-44

August 9, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Dustin Lee Smart appeals his twelve-year sentence for two counts of Class B felony robbery with a deadly weapon. We affirm.

Issue

We consolidate and restate the issue as whether the trial court properly sentenced Smart.

Facts

On August 14, 2006, Kari Nunemaker drove Smart, Tyler Sellers, and a third unidentified person to the residence of Lance Steffen, which was located in Huntington County. The three were dressed in black jackets, baseball caps, and gloves and were armed with two handguns among them. Thereafter, Smart, Sellers, and the third person broke into Steffen's home, loaded a .357 revolver in front of Steffen, and tied up Steffen and his guest, Alfredo Valencia. The three robbers took various items from Steffen's home including a handgun, Mexican currency, various medications, two hundred dollars, and jewelry. After completing the robbery, a phone call was placed to Nunemaker from Steffen's cell phone and Nunemaker picked them up.

On September 6, 2006, the State charged Smart with two counts of Class B felony robbery with a deadly weapon and two counts of Class B felony confinement by means of a deadly weapon. Under terms of a plea agreement, Smart pled guilty to two counts of Class B felony robbery and in exchange the State dismissed the remaining charges. The plea agreement also provided that the sentences would run concurrently and the executed

term would be capped at twelve years. Other sentencing matters were left to the discretion of the trial court.

On December 18, 2006, the trial court sentenced Smart to twenty years imprisonment for both robbery counts to be served concurrently, and suspended eight years of that sentence. Smart now appeals.

Analysis

Smart argues that the trial court abused its discretion in sentencing him because it improperly considered the aggravators and mitigators. Specifically, Smart contends that the trial court did not give sufficient mitigating weight to Smart's difficult childhood and improperly considered that other felony charges were dismissed pursuant to the plea agreement. We note that Smart committed these crimes after our legislature replaced "presumptive" sentences with "advisory" sentences in April 2005. Our supreme court recently provided an outline for the respective roles of trial and appellate courts under the 2005 amendments to Indiana's sentencing statutes. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, a trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravators or mitigators, is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

The trial court did not abuse its discretion in its assessment of mitigators and aggravators. Guilty pleas do not constitute significant mitigation where the defendant receives a significant benefit in exchange for the plea or where the evidence of guilt is such that the decision to plead guilty is merely pragmatic. Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999). Here, Smart received a substantial benefit in exchange for his plea, namely the State agreed to dismiss two Class B felony charges and allow for concurrent sentencing. Under the terms of the agreement, Smart reduced his potential exposure from forty years to a maximum executed term of twelve years. The trial court, therefore, properly acknowledged Smart's guilty plea but resolved not to give it substantial mitigating weight. The weight a trial court decides to give a mitigator is not reviewable on appeal. See Anglemyer, supra, 868 N.E.2d at 491.

Smart also contends that the trial court failed to give sufficient mitigating weight to his difficult childhood which includes a strained relationship with his now deceased father, mental and substance problems, and limited education. Any challenges to the weight afforded particular mitigators and aggravators are not subject to appellate review. Id.

Smart finally argues that the trial court improperly identified and considered an aggravating factor. Specifically, Smart challenges the trial court's determination that his "actions show a complete absence of respect for the laws of the State of Indiana" constitutes a proper aggravator. Tr. p. 29. A close reading of the trial record reveals that the trial court delineated Smart's extensive criminal history prior to concluding that his "actions show a complete disrespect for the laws of the State of Indiana." Id. We

construe this statement to mean that the trial court found his criminal history—not an isolated criminal act—to be an aggravator. The trial court, therefore, did not rely on an improper aggravator in its determination of Smart's sentence.

We independently address whether the sentence was inappropriate in light of the nature of the offense and the character of the offender. Anglemyer, supra, 868 N.E.2d at 491. The record reveals that Smart has an extensive criminal history that includes three felony convictions, at least two probation violations, and an on-going substance abuse problem. In fact, Smart admits that the desire to "buy more crack and pills" motivated the instant robbery. Appellant's App. p. 102. In light of the nature of the offense and especially Smart's character, as revealed by his criminal history, we find that the trial court's sentence, twelve years executed and eight years suspended, is not inappropriate.

Conclusion

Smart's twelve-year sentence is not the result of an abuse of trial court discretion and is not inappropriate.

Affirmed.

NAJAM, J., and RILEY, J., concur.